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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,353	07/11/2003	Jean-Marie Mathias	F-5932	6728

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EXAMINER

WITCZAK, CATHERINE

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,353

Applicant(s)

MATHIAS, JEAN-MARIE

Examiner

Catherine N. Witczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 4-9, 11, 12, 14-26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Dillon et al (US 6,165,157).

Claims 1, 11, 14, 15, 16, 17, 18, 19, 20, and 29: Dillon et al disclose in Figure 1 a blood collection needle assembly including a piercing end (16), a hub (18) and a plastic tube (12); a body (10) including a plurality of side walls and an open end (30) for receiving the hub (18) and a second open end (20) having a multiple profile window (28) comprising a larger and smaller size profile (mid section and tapered ends, respectively); wherein one of the side walls includes a retaining member (36) adapted for contacting said hub of said needle assembly; and where one of the side wall defines a groove extending axially from first open distal end to said proximal end (74).

Claims 4 and 22: Dillon et al disclose in Figure 5 one of the sidewall comprising guiding ledges (80).

Claims 5 and 23: Dillon et al disclose in Figures 5 and 6 the guiding ledges (80) extending inwardly from the sidewall including the retaining member.

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Claims 6, 7, and 24: Dillon et al disclose in Figure 5 the sidewall including an axial groove (74).

Claims 8 and 25: Dillon et al disclose the retaining member (36) comprising a detent.

Claims 9 and 26: Dillon et al disclose an outwardly extending radial flange (4) at open distal end.

Claims 12 and 21: Dillon et al disclose in Figure 1a a sidewall defining a slot for viewing the interior chamber.

2. Claims 1, and 4-11, 14-20, 22-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Mathias et al (WO 01/36025).

Claims 1, 11, 14, 15, 16, 17, 18, 19, 20, 29: Mathias et al disclose in Figure 4 a needle protector for use with a needle assembly including a piercing end (12), hub (13), and plastic tube (16); the protector comprising a body (42), a pair of sidewalls, and a open end comprising a dual profile window (Figure 5) comprising a larger and smaller profile both capable of retaining tubing; and at least one of the side walls including a retaining member (70) and another side wall defining an axial groove (Figure 4 and 5).

Claims 4, 5, 22 and 23: Mathias et al disclose in Figure 6 the side wall (56) including a retaining member (70) comprising a first and second guiding ledge (distal and proximal parts of 74).

Claims 6, 7, and 24: Mathias et al disclose in Figure 4 and 5 the side wall opposite the side wall (56) including the retaining member (70) defining an axial groove.

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Claims 8 and 25: Mathias et al disclose on page 8, lines 14-15 the retaining member (70) comprising a detent depending from one of the sidewalls (56).

Claims 9 and 26: Mathias et al disclose in Figure 6 the body comprising an outwardly extending radial flange (64) at the open distal end.

Claims 10 and 27: Mathias et al disclose in Figure 6 a cap (56 and 76) associated with open distal end.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hajianpour (US 6,908,455).

Dillon et al OR Mathias et al disclose the claimed invention except for the body being comprised of a substantially transparent plastic material. Hajianpour discloses in column 7, lines 47-50 the body being comprised of a transparent plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Dillon et al OR Mathias et al with a transparent plastic as taught by Hajianpour, since such a modification would provide visual access of the contents inside the body.

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Response to Arguments

Applicant's arguments filed 7/21/2006 have been fully considered but they are not persuasive. Applicant submits that Dillon et al does not disclose a multiple profile window. Examiner however points out the definition of profile as provided by the Compact Oxford English Dictionary as being "an outline of something as seen from one side". In light of this definition, the window (28) of Dillon et al as shown in Figure 2 does have a multiple profile, as it has a circular outline in its middle, and a second tapered outline at its edges.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cw

Witczak 9/29/06

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons